Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	WT Docket No. 06-49
Part 90 Rules in the 904-909.75 and	)	
919.75-928 MHz Bands	)	

REPLY COMMENTS OF ITRON, INC.

Itron, Inc. ("Itron") hereby submits reply comments with respect to the above-referenced Notice of Proposed Rulemaking ("NPRM").[1] Progeny's submissions lack essential details and, without them, the Commission simply is left with Progeny's suspect assertion that existing and future Part 15 products and services would not be disturbed if rules that were carefully crafted to permit the co-existence of M-LMS and Part 15 were scrapped. The many responses to the NPRM, however, establish that Progeny's assertion has no basis whatsoever.

Although Progeny has had years to develop a concrete proposal as to how protection to Part 15 users could be maintained if the M-LMS rules were changed, its comments in this proceeding demonstrate that Progeny has yet to do so. Instead, its constant refrain is that Part 15 technologies, even those relying on the Commission's safe harbor provisions, should be more sophisticated and resistant to interference from M-LMS licensees. This is simply another way of saying that millions of consumers should be required to pay the increased costs for more interference-resistant devices so

[1] *In the Matter of Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Notice of Proposed Rulemaking, WT Docket No. 06-49, FCC No. 06-24 (rel. March 7, 2006) ("NPRM").

that a single M-LMS licensee can make good on a bad investment – an investment, it must be noted, that Progeny made with its eyes open to the sharing requirements of the band. The Commission should terminate this proceeding promptly.

DISCUSSION

I. The 902-928 MHz Spectrum Environment Should Not Be Jeopardized.

a. The proposed rule changes would pose harm to all Part 15 devices, including utility Automatic Meter Reading systems.

Itron agrees with the Part 15 community of users and manufacturers, who have shown that the M-LMS rule changes that Progeny would have the Commission consider would, if adopted, pose problems to their continued ability to use the spectrum for the public benefit. The Commission has created a unique spectral environment in the 902-928 MHz band that, because of a successful and well-balanced regulatory regime, has fostered much innovation and public benefit. The rules were carefully crafted to permit a licensed niche service to co-exist in a growing and valuable unlicensed environment.

If a licensed service has not found a large market, for whatever reason, the answer is not to change the rules in a manner that jeopardizes the predominant use of the band. As a niche service, M-LMS now is making some contribution, but even if it disappeared, the 902-928 MHz band would still be an intensively shared, efficient use of the radio spectrum, which is growing and which contributes billions of dollars of value

to the national economy, provides for the health and safety of the public, and provides varied and needed products and services to all Americans.[2]

b. **The rubric of "regulatory flexibility" provides no basis for rescuing licensees from their failures.**

The FCC has had a number of responses when the originally-contemplated use of a frequency band is not realized. One option is to eliminate a service, particularly when the same band is being put to more intensive and better use. Several parties suggest that in this instance the public interest is best served by canceling the M-LMS licenses, thereby freeing unlicensed spectrum users from the constraints imposed by the M-LMS overlay.[3]

Moreover, the examples of "regulatory flexibility" on which Progeny relies do not support its position. For instance, with regard to the Commission's change in the Mobile Satellite Service rules to allow ATC operations, that proceeding differs in that the FCC did not change the MSS technical rules, as Progeny seeks here, in a manner that would cause increased inference to other spectrum users.[4] As well, the FCC allowed ATC authority only as a service *ancillary to* the satellite service, requiring that "MSS

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[2] *See* Comments of the Part 15 Coalition at 3-4.

[3] *See* Comments of New America Foundation *et al.* at 3 and 23 and Comments of WISPA at 1.

[4] *See In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003) (allowing MSS operators authority to integrate ATC into their networks within the same satellite footprint and using the same coverage requirements as the satellite service).

remains first and foremost a satellite service," whereas in this instance it appears that Progeny intends to abandon M-LMS in favor of an entirely new service.[5]

The FCC simply does not pursue regulatory flexibility at the expense of interference protection.

II. No Sound Justification Is Provided for the Proposed Rule Changes.

The proponent of a Commission rulemaking bears the burden of demonstrating that its proposed rule changes are in the public interest. In this case, it is a particularly heavy burden because the rules were adopted only recently and were very carefully crafted to permit the co-existence of a licensed service with a growing universe of unlicensed technologies.

Progeny seems to believe that the technical and operational limits that it now wants to change were adopted capriciously. In fact, each of those limits serves the purpose of permitting unlicensed users of the band to flourish and, in that essential objective, they have succeeded. If the rules are to be changed at all, they must be modified with precision, keeping intact the Part 15 objective. However, Progeny has failed utterly to articulate sound reasons for doing so.

a. Progeny's proposed regulatory scheme is implausible.

Progeny has offered an implausible regulatory approach – *i.e.*, that it can operate at substantially higher power levels than Part 15 devices and with widespread

[5] *Id.*

deployment of its transmitters, but not cause interference to users operating at much lower power levels.

Progeny has not specified its intended use of the spectrum; it has provided only unsupported statements that it is developing position location technology, which does not appear to have added benefits from current GPS or E911 offerings. Progeny relies upon a vague claim that it will provide homeland security and public safety type services, but this standing alone is not sufficient reason to change the rules without consideration of the effect of the proposal on Part 15 users. Presently, Part 15 technologies are being used for many homeland security and/or public safety applications. Just one example of this is the supervisory control and data acquisition ("SCADA") system, which as the Part 15 Coalition explained is an important use of the unlicensed spectrum, one that is critical to our national security and public safety.[6] Interference to these systems would pose an undue risk to our nation's power grid as well as to the safety of our gas and pipeline operations. The critical infrastructure operations that are dependent on reliable Part 15 operations should not be jeopardized for the sake of saving M-LMS.

Calling for more "efficiency" on the part of unlicensed users of the band is not a technical proposal, it is merely a call to impose billions of dollars of costs on the general public, who use unlicensed products and services. At present, the unqualified success of the Commission's regulatory policy for Part 15 has been achieved with the right balance of consumer pricing models and the cost of technical complexity necessary for

[6] Comments of the Part 15 Coalition at 3.

robustness in operating in an intensively used portion of the spectrum. The Commission and the unlicensed industry got the balance right; now Progeny would upset the balance and impose substantial new costs on the public – not for any demonstrable benefit to the public but merely to enhance the value of the licensed spectrum for Progeny, which has been aware of the limited use of the spectrum when it purchased the spectrum rights.

b. Progeny has made no viable technical showing.

Progeny's comments add nothing to its so-called technical showing. It rests for the most part on its "White Paper," which was refuted by Itron when first submitted several years ago during the proceeding regarding Progeny's petition for rulemaking.[7] As Itron noted then, many assumptions made by Progeny were invalid.[8] As well, the White Paper rested on an assumption that Itron's AMR systems would operate only on channels that are adjacent to M-LMS channels. This assumption is invalid today, as Itron has developed new systems that are using more of the spectrum in order to pass more data, and in fact holds multiple certifications for AMR equipment that overlap with M-LMS.[9]

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[7] *In the Matter of Progeny LMS, LLC, Petition for Rulemaking to Amend Part 90 of the Commission's Rules Governing the Location and Monitoring Service*, Comments of Itron, Inc. on Progeny White Paper at 2, RM-10403 (filed Jan. 10, 2003).

[8] Indeed, Progeny makes another invalid statement in discussing Itron's system in its comments: That the devices operate at 915 ± 3 MHz, which is incorrect.

[9] Of course, the paper does not even address the possibility of interference to any other unlicensed users in the band, which, as the record in this proceeding makes clear, are many and varied.

Similarly, Progeny's Appendix B submission does not provide support for the proposed technical changes. The underlying assumption is that all M-LMS services will have the same large coverage area, which is not true for all geographic areas. There also is an assumption that the coverage area for higher powered transmitters does not have any holes where service cannot be provided with a single transmitter. In reality, there will be service holes, *e.g.* due to building blockage. Additional transmitters will be needed to provide service to those particular areas lacking service. As result, there still will be a need for more transmitters than claimed by Progeny in order to meet its service requirements. So the overall benefit that Progeny alleges is illusory.

Additionally, Progeny cannot support its rule changes on the basis that any interference to Part 15 users would be "negligible."[10] This term is undefined, and the idea is unsupported by the technical showings. And, of course, without knowing what the future M-LMS uses would be or what new M-LMS technologies are developing, Itron cannot determine the effect of any "negligible" interference on Part 15.

Finally, Itron notes that Progeny seeks an additional 5 dB in output power for M-LMS systems using sectorizing antennas and closed loop power control.[11] Itron opposes such a scheme, as it does not provide Part 15 with predictability or allow Part 15 to plan services in ways that would eliminate interference events. Part 15 devices are randomly located throughout the service area and are constantly changing, so use of

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[10] Progeny argues that its proposal is valid because it only will cause "negligible interference to the vast majority of Part 15 devices." Comments of Progeny LMS, LLC at 24.

[11] Comments of Progeny LMS, LLC at 30. The study that Progeny cites does not accurately address the varied uses in the Part 15 environment.

sectorized antennas and closed loop power control will not relieve any interference to Part 15 devices.

c. **At bottom, Progeny fails to provide sufficient information with which to evaluate its proposal.**

As noted by numerous parties, there is insufficient information to evaluate how the proposed technical changes would affect the spectrum as a whole, how it would affect interference to Part 15 devices, or how it would affect the ability of Part 15 devices to innovate and deploy in the band. For example, Progeny does not provide a deployment scenario for M-LMS that can be used to analyze the potential for interference to Part 15 or to determine whether co-existence is possible. Thus, with regard to the Commission's suggested spectral power density limit, Itron has insufficient information regarding Progeny's proposal system with which to evaluate this suggested rule change. Because of this lack of information, Itron vigorously opposes any technical rule changes.

CONCLUSION

Progeny simply has not met its burden of proof, which is quite high given the impact to Part 15 devices, of demonstrating that the proposed rule changes are in the public interest. As well, Progeny has not provided any assurances that it can or will protect Part 15 operations. Itron requests that the Commissions terminate this proceeding immediately so that it and the rest of the Part 15 community have the necessary regulatory certainty to continue to develop products for the spectrum without concern of interference from M-LMS operations.

Respectfully submitted,

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